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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,747	03/14/2006	Eric L. Meijer	PHUS030320US	1210

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595 MINER ROAD
CLEVELAND, OH 44143

EXAMINER

LARYEA, LAWRENCE N

ART UNIT	PAPER NUMBER
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3768

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10/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/571,747	Applicant(s) MEIJER, ERIC L.	
	Examiner Lawrence N. Laryea	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4-7,9,11-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,4-7,9,11-13 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiner acknowledges Applicant's amendment and remarks filed 24 October 2007

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 2,4-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 2, line 7 recites the limitation "the diagnostic image". There is insufficient antecedent basis for this limitation in the claim.
4. Claim 2, lines 7-8 recite the limitation "the baseline and stored diagnostic image". There is insufficient antecedent basis for this limitation in the claim.
5. Claim 4, line 4 recites the limitation "the baseline diagnostic image". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
7. Claims 9, 11-13,15-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
8. In addition to inquiry of whether a claimed method falls within a judicial exception,

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Supreme Court precedent (*Diamond v. Diehr*, 450 U.S. 175, 184 (198); *Parker v. Flook*, 437 U.S. 584 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).) and Federal Circuit decisions require that a claim drawn to a process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under 35 U.S.C 101 and is improperly directed to nonstatutory subject matter.

Thus to qualify as 35 U.S.C 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied or positively recite the subject matter that is being transformed.

9. Claims 9 and 18 do not positively recite any physical transformation, and there is no sufficient tie to another statutory class (such as particular apparatus), and thus are improperly directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 4, 5, 9, 11, 12, 15, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dewaele (US Patent 7,065,235)** in view of **Ema et al (US Patent 5,779,634)**.

12. Dewaele teaches a diagnostic image processing system comprising: a user interface (display) (**See Figures 7 and 8**) with which a user selects a region of interest of at least a baseline diagnostic images from which the parameter values are to be extracted (**See Col. 5, lines 1-19**) a parameter extraction processor (a computer program inherently run by a processor) for extracting like parameter values from the selected region of interest from data (**reference images**) for generating the baseline and stored diagnostic images and a report formatting means for formatting the extracted parameter values from the baseline and diagnostic images generated at different times into a report descriptive of the parameter value development with time (**See Col. 6, lines 48-67, Col. 10, lines 6-64, Col. 9, lines 20-22, Col. 12, lines 22-42 and Claim 13 and Fig. 8**).

13. Dewaele teach the claimed invention see rejection supra, **Dewaele** does not expressly teach that the medical information processing system includes a subject database that stores the diagnostic images each in association with at least a patient identity and date, the database being, updated each time a patient is imaged and searching means

14. Ema et al (US Patent 5,779,634) teach a medical information processing system wherein a subject database that stores the diagnostic images each in association with at least a patient identity and date, the database being, updated each time a patient is imaged and searching means (**See Col.6, lines 39- 67, Col.7, lines 64-67, Tables 16,1,2,3,6-10, Col.1, lines 27-32, Col.25, lines 12-32, Col.37, lines 40-67**) in order to evaluate medical examination more efficiently (**See Col.1, lines 9-14 and Col.3, lines 23-64**).

It would have been obvious to one having ordinary skill in the art at the time invention was made to modify a diagnostic image processing system of **Dewaele** wherein a subject database that stores the diagnostic images each in association with at least a patient identity and date, the database being, updated each time a patient is imaged and searching means of **Ema et al** in order to evaluate medical examination more efficiently as taught by **Ema et al**.

15. Claims 6,13,15-17,19,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dewaele (US Patent 7,065,235)** in view of **Ema et al (US Patent 5,779,634)** as applied in Claim 1 and further view of **Hochman (US 2003/0236458)**.

16. **Dewaele and Ema et al** teach the claimed invention see rejection supra **Dewaele and Ema et al** do not teach that the diagnostic processing system includes a graphing means for plotting change of selected parameter versus time.

17. **Hochman** teaches a diagnostic processing system includes graphing means for plotting change of selected parameter versus time in order to monitor various medical conditions such as blood characteristics, blood flow and abnormalities in tissues during examination purposes (**See Fig. 2-7B, Paragraphs [0028], [0119],[0002], [0204], and [0263]**).

It would have been obvious to one having ordinary skill in the art at the time invention was made to modify a diagnostic processing system of **Dewaele and Ema et al** to includes graphing means for plotting change of selected parameter versus time of **Hochman** in order to order to monitor various medical conditions such as blood

characteristics, blood flow and abnormalities in tissues during examination purposes

(See Fig. 2-7B, Paragraphs [00110], as taught by Hochman.

18. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Dewaele (US Patent 7,065,235)** in view of **Ema et al (US Patent 5,779,634)** as applied in Claim 1 and further view of **Washburn et al (Patent 6,379,306)**.

19. **Dewaele and Ema et al** teach the claimed invention see rejection supra
Dewaele and Ema et al do not teach that the diagnostic processing system includes a cine generator.

20. **Washburn et al (Patent 6,379,306)** teach a diagnostic processing system which includes a cine generator in order to display acquired images in a video format **(See Col.9, lines 39-64, Col.6, lines 27-53, Fig.5 and 6)**.

It would have been obvious to one having ordinary skill in the art at the time invention was made to modify a diagnostic processing system of **Dewaele and Ema et al** includes a cine generator of **Washburn et al** in order to display acquired images in a video or movie format as known in the art.

Response to Arguments

Claims 2, 4-7, 9, 11-13, 15-21 are now pending. The Examiner acknowledges the amendments to Claims 2, 4-7, 9, 11-13, 15-20, cancellation of Claims 1,3,8,10,14 and addition of Claim 21.

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Applicant's arguments with respect to the rejection(s) of claim(s) 2, 4-7,9, 11-13,15-21 have been fully considered have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence N. Laryea whose telephone number is 571-272-9060. The examiner can normally be reached on 9:30 a.m.-5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/L. N. L./

/Eric F Winakur/
Primary Examiner, Art Unit 3768